

GAHC010107502024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Bail Appln./1576/2024

MD. MAFIZAL HAQUE
S/O MD. MAZNUR ALI, R/O FANCYPARA, GARIGAON, P.S.-JALUKBARI,
DIST-KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. C K NATH, MR. AJAY SARMA, MR. N MAHAJAN

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 29.10.2024

Heard Mr. B.K. Mahajan, learned counsel for the petitioner. Also heard Mr. D.P. Goswami, learned Additional Public Prosecutor representing the State of Assam.

2. This is the second bail application filed by the petitioner u/s 439 Cr.P.C.

seeking bail in connection with NDPS Case No. 01/2024, u/s 21(c)/29(1) of NDPS Act, pending in the court of learned Additional District and Sessions Judge No. 2 Kamrup(M) at Guwahati.

3. The prosecution case in brief is that an FIR has been lodged on 11/07/2023 before the Officer-in-Charge, S.T.F Police Station stating *inter alia* that on 10/07/2023, on receipt of an information regarding drugs dealer would strike a deal in Garigaon and Baihata area, a joint search was conducted in the said area. During search operation, information was received that the deal was shifted to another location somewhere at Sonapur. Accordingly, police rushed to Sonapur near toll plaza and the peddlers were traced travelling in two vehicles i.e., Hyundai Creta and a Honda City. The police tried to stop the peddlers at Sonapur toll gate. However, the peddlers in the Creta vehicle bearing No. AS-01-FE-1589 hit the barricade of toll gate and sped away towards Guwahati. Though the police fired aiming at the tyre of the vehicle to prevent it from escaping but the bullet hit the vehicle. Police team chased to apprehend the vehicle but failed to do so.

4. On the other hand, the Honda City vehicle bearing No. AS-01-BL-2211 was intercepted at Sonapur toll gate and the lone peddler who was detained accordingly. During search of the Honda City vehicle, about 1.873 kgs of suspected heroine was recovered, which were seized accordingly. The present accused petitioner was found inside the Honda City vehicle along with heroine and he was arrested. Thereafter, a case was registered vide S.T.F P.S. case No. 06/2023.

5. It was urged by the learned counsel for the petitioner that due to the

alleged incident the accused/ petitioner sustained bullet injury in his leg for which he was treated at GMCH. It is further submitted that the petitioner had earlier approached before this Court seeking regular bail vide BA No. 287/2024 but the said bail application was rejected on 26/04/2024. The accused/petitioner again approached this Court for the second time on the ground of length of detention and prolonged incarceration of the accused/petitioner without any offence committed by him, particularly considering the fact that seizure witnesses have not supported the alleged seizure. Moreover, there is complete violation of section 52A of the NDPS Act.

6. Learned counsel for the petitioner has also contended that as the investigating agency has already submitted the charge sheet after completion of the investigation and as such, further custodial detention of the petitioner might not be required. Further, the accused/petitioner cannot defend his case properly if bail is not granted to him.

7. According to learned counsel for the petitioner, as the seizure witness did not support the prosecution case as such, there is no chance of conviction of the accused/ petitioner and therefore, the bar of Section 37 of NDPS Act is not attracted here in this case.

8. The learned counsel for the petitioner has also pointed out that the sampling of the narcotic drugs was not done on the date of detention i.e., on 12/07/2023 and the same was carried out on 15/09/2023 i.e., after a lapse of 67 days from the date of seizure which is in violation of the law laid down by the Hon'ble Supreme Court in the case of Union of India vs. Mohan Lal reported in (2016) 3 SCC 379 and as such, the petitioner be enlarged on bail.

9. It is further submitted that no contraband was recovered from the conscious possession of the accused/ petitioner and he is nowhere connected with the instant case but the investigating agency without proper investigation arrested him purely on suspicion. Considering the entire facts and circumstances of the case, the petitioner may be enlarged on bail.

In support of his submission, learned counsel has placed reliance on the following case laws –

- a. (2004) 12 SCC 266 (Sarija Banu vs. State through inspector of police)
- b. Bail Application 1859/2023 (Prabhat Rabha and Anr. vs. State of Assam)
- c. Bail Application 2338/2023 (Jakir Ahmed and another vs. The State of Assam)

10. In response, learned Additional Public Prosecutor submits that the charge sheet against the accused/ petitioner and the co-accused was submitted u/s 21 (c)/29(1) of NDPS Act. Accordingly, charge was framed under the same sections of law on 21/01/2024 and six witnesses have already been examined. As commercial quantity of contraband was recovered from the possession of the accused/petitioner, section 37 of NDPS Act will come into play. Hence, learned Additional Public Prosecutor has vehemently opposed in granting bail to the accused/ petitioner.

11. Having heard the learned counsel for the parties and on perusal of the trial court record, it reveals that out of 14 witnesses, 6 witnesses have been examined by the trial court. Though one seizure witness did not support the prosecution case but it cannot be said at this stage that there are reasonable grounds for believing that the accused/ petitioner is not guilty of such offence. The admitted fact is that the accused was found in the vehicle along with commercial quantity of heroine. There is no explanation from the side of the petitioner why he was carrying such huge quantity of narcotic drugs at the relevant time.

12. It is plain from the language of section 37 (1)(b) that the court must adopt a negative attitude towards bail but turn positive firstly if it is satisfied that there are reasonable grounds for believing that the accused is not guilty of offence under the act and secondly that he is not likely to commit any offence while on bail. Both these tests must be satisfied before bail can be granted. The quantity of ganja recovered is admittedly of commercial quantity in the instant case.

13. In the case of **Mukesh Rajaram Chaudhari vs. State of Maharashtra**, reported in **(2023) 4 Crimes(HC) 91**, it was observed that –

“.....Even if it is shown as procedure u/s 52A of NDPS Act is not followed, accused does not automatically become entitled to bail as a matter of right and the rigors of Section 37 of the NDPS Act would continue to apply. Only when the court is satisfied that reasonable grounds of believing that the accused is not guilty of the offence and that he is not likely to commit any offence while on bail, the bail

would be granted...”

14. Lastly, the Court must not forget that the burden always remains on the prosecution to prove the guilt of the accused beyond reasonable doubt and it cannot be ignored that the accused/petitioner has yet not come up with any plausible explanation, during trial, as to the reason for his possession of such large quantities of contraband.

15. In view of the above and the factual matrix of the case that large quantities of alleged contraband items were recovered from the possession of the accused/ petitioner and further most relevantly as the accused/ petitioner is yet to come up with any explanation why he was in possession of such large quantities of contraband, in the opinion of this Court, the aforesaid twin conditions u/s 37 of NDPS Act have not been satisfied with. Hence, the prayer for bail is rejected at this stage.

16. Needless to say, the observations made on the merits of the matter, if any, are purely for the purpose of adjudicating the present bail application and shall not be construed as expressions on the merits of the case.

17. Accordingly, the present bail application is disposed of. However, the trial court is directed to expedite the trial of the case.

JUDGE

Comparing Assistant